

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DOUGLAS CAVANAUGH,
an individual;

Plaintiff,

v.

AMAZON.COM, INC., a
Delaware corporation; and
DOES 1–10;

Defendants.

Case No. 20-1765

PLAINTIFF’S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT,
and
2. VICARIOUS and/or
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Douglas Cavanaugh (“Cavanaugh” or “Plaintiff”), by and through his undersigned attorneys, hereby prays to this honorable Court for relief based on the following:

INTRODUCTION

Plaintiff Douglas Cavanaugh is a Pennsylvania artist whose unique artwork incorporates various Celtic and Nordic themes, including unique depictions of mythological creatures. Cavanaugh’s livelihood is dependent on his ability to license his artwork and sell merchandise

COMPLAINT

Case No. 20-1765

The Jacob Freeman Law Firm, PLLC

415 1st Avenue N | No. 9466

Seattle, Washington | 98109

tel: 206-350-1066 | fax: 206-350-1120

1 bearing his designs. Unfortunately, Cavanaugh's artwork has been misappropriated and
2 incorporated into unauthorized apparel and personal accessory items being sold on Amazon.com,
3 Inc.'s ("Amazon") website and marketplace, www.amazon.com ("Amazon Website"). Despite
4 Amazon's receipt of a fully compliant takedown notice under the Digital Millennium Copyright
5 Act ("DMCA") from Plaintiff, Plaintiff's copyrights continue to be infringed on the Amazon
6 Website. This action is brought to address Amazon's failure to comply with the DMCA and the
7 resulting ongoing and willful infringement of Plaintiff's rights in and to his artwork.
8

9 **JURISDICTION AND VENUE**

- 10
- 11 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §§ 101 *et seq.*
 - 12 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).
 - 13 3. Defendant Amazon.com, Inc. is subject to personal jurisdiction in Washington
14 because it maintains its principal place of business in this state, at 410 Terry Avenue North, Seattle,
15 Washington 98109.
16
 - 17 4. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b)(2) and (c)(2)
18 because this is the judicial district in which a substantial part of the events giving rise to the claim
19 occurred and this is the jurisdiction in which Defendant may be found.
20

21 **PARTIES**

- 22 5. Plaintiff Douglas Cavanaugh ("Plaintiff") is an individual domiciled and residing
23 in Ferndale, Pennsylvania.
- 24 6. Upon information and belief, Defendant Amazon.com, Inc. is a corporation
25 organized and existing under the laws of the State of Delaware with its principal place of business
26 located in Seattle, Washington.
27

COMPLAINT

Case No. 20-1765

1 7. Upon information and belief, Defendants DOES 1-5, inclusive, are manufacturers
2 and/or distributors of products offered for sale on the Amazon Website, which Defendants DOES
3 1-5 have manufactured, imported, supplied, and distributed apparel and other products bearing
4 unlawful reproductions of Plaintiff's illustration titled "Fenrir: The Monster Wolf of Norse
5 Mythology" (the "Subject Work") without Plaintiff's consent, or have contributed to said
6 infringement. The true names, whether corporate, individual, or otherwise of Defendants DOES
7 1-5, inclusive, are presently unknown to Plaintiff, who therefore sues said Defendants by such
8 fictitious names and will seek leave to amend this complaint to show their true names and
9 capacities when the same have been ascertained.
10

11 8. Upon information and belief, Defendants DOES 6-10, inclusive, are retailers and/or
12 vendors of products offered for sale on the Amazon Website, which Defendants DOES 6-10 have
13 displayed and distributed apparel and other products bearing unlawful reproductions of Plaintiff's
14 illustration titled "Fenrir: The Monster Wolf of Norse Mythology" (the "Subject Work") without
15 Plaintiff's consent, or have contributed to said infringement. The true names, whether corporate,
16 individual, or otherwise of Defendants DOES 6-10, inclusive, are presently unknown to Plaintiff,
17 who therefore sues said Defendants by such fictitious names and will seek leave to amend this
18 complaint to show their true names and capacities when the same have been ascertained.
19

20 9. Upon information and belief, and at all times relevant hereto, each of the
21 Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or
22 employee of the remaining Defendants and was at all times acting within the scope of such agency,
23 affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently
24 ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
25
26
27

COMPLAINT

Case No. 20-1765

The Jacob Freeman Law Firm, PLLC

415 1st Avenue N | No. 9466

Seattle, Washington | 98109

tel: 206-350-1066 | fax: 206-350-1120

all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

CLAIMS RELATED TO PLAINTIFF'S DESIGN
"FENRIR: THE MONSTER WOLF OF NORSE MYTHOLOGY"

10. Prior to the conduct complained of herein, Plaintiff composed the Subject Work – an original two-dimensional artwork for use, license, and sale on t-shirts and other products. The Subject Work was a creation of Plaintiff, and is, and at all relevant times was, owned exclusively by Plaintiff.

11. Plaintiff applied for a United States copyright registration for the Subject Work. The resulting U.S. Copyright Registration No. VA 2-119-205 has an effective date of December 11, 2017. The Copyright Registration Certificate and accompanying deposit materials are annexed hereto as **EXHIBIT A**.

12. Prior to the acts complained of herein, Plaintiff posted the Subject Work onto his website, www.CelticHammerClub.com, and offered it for sale on t-shirts and other products via his own website, and also third party websites, including but not limited to, RedBubble.com and TeePublic.com.

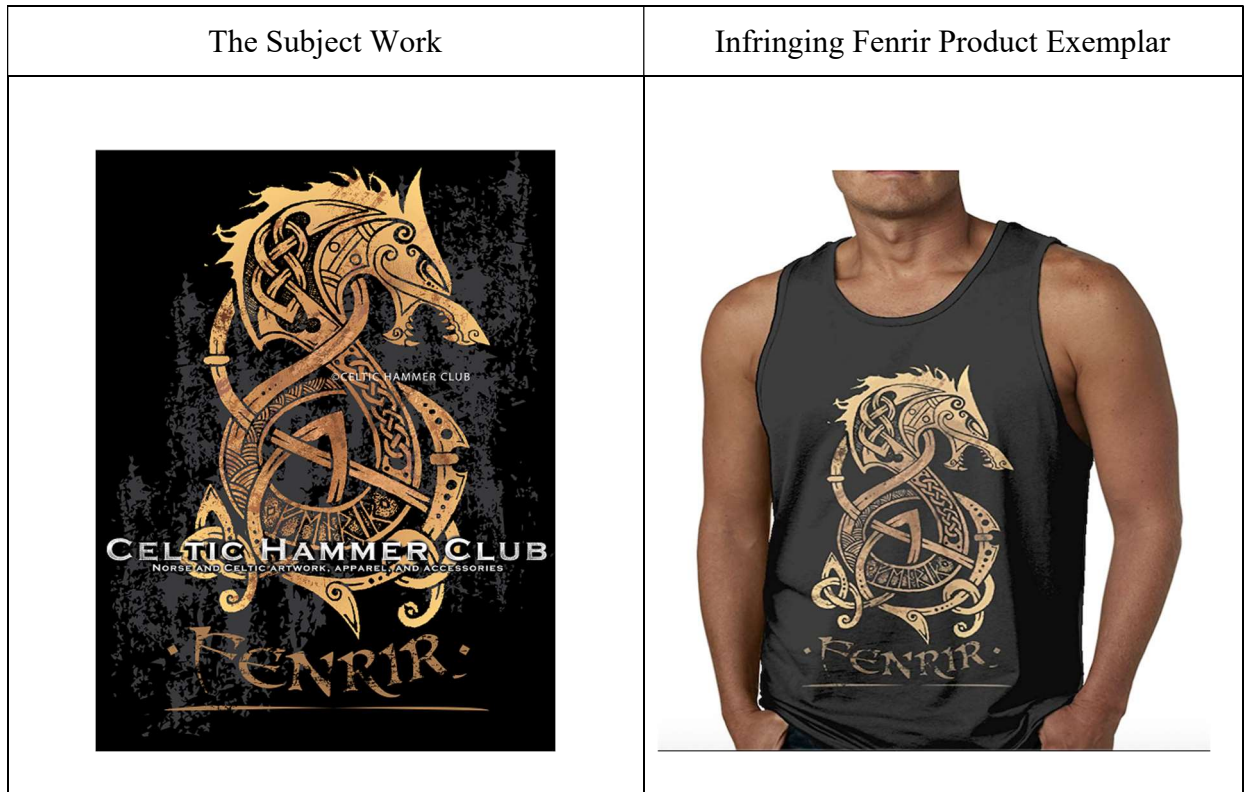
13. Following Plaintiff's publication and distribution of products bearing the Subject Work, he discovered that certain entities and individuals had misappropriated the design and were selling apparel and personal accessory products bearing illegal reproductions of the Subject Work on the Amazon Website.

14. Upon information and belief, and without Plaintiff's authorization, Defendants created, sold, manufactured, caused to be created, manufactured, imported and/or distributed, apparel and other products bearing designs which are identical to the Subject Work ("Infringing

COMPLAINT

Case No. 20-1765

Fenrir Product”). Below is a comparison of the Subject Work and one exemplar of Infringing Fenrir Product:



15. The above comparison clearly shows that the elements, composition, colors, arrangement, layout, and appearance of the designs at issue are substantially similar and/or identical.

16. The above exemplar is non-inclusive, and the allegations set forth herein are as to the entire universe of product sold by Defendants, and each of them, that bear a design similar to the Subject Work.

17. On October 14, 2020, Plaintiff submitted a notice of copyright infringement to Amazon’s legal department, in compliance with the Digital Millennium Copyright Act

COMPLAINT

Case No. 20-1765

The Jacob Freeman Law Firm, PLLC

415 1st Avenue N | No. 9466

Seattle, Washington | 98109

tel: 206-350-1066 | fax: 206-350-1120

1 (“DMCA”). The notice was submitted via email to Amazon’s registered copyright agent at
 2 copyright@amazon.com. A copy of the DMCA notice is annexed hereto as **EXHIBIT B**.

3 18. The notice alerted Amazon to fifty-one (51) Amazon Website listings offering
 4 infringing products and requested removal of all 51 listings. In response, Plaintiff received an
 5 automated message confirming Amazon’s receipt of Plaintiff’s DMCA notice. Plaintiff received
 6 no further communication from Amazon regarding these listings, and, to date, 24 out of the 51
 7 infringing links remain active. Screen captures of each of the infringing links, taken on November
 8 24, 2020, in Google Chrome’s “Incognito Mode,” are annexed hereto as **EXHIBIT C**. As of the
 9 date of this Complaint, the listings remain active.
 10

11 19. Upon information and belief, Defendants, and each of them, have committed
 12 copyright infringement with actual or constructive knowledge of Plaintiff’s rights, and/or in blatant
 13 disregard of Plaintiff’s rights, such that said acts of copyright infringement were, and continue to
 14 be, willful, intentional and malicious, subjecting Defendants, and each of them, to liability for
 15 statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred
 16 fifty thousand dollars (\$150,000.00) per infringement.
 17

18 **DMCA SAFE HARBOR PROTECTION**

19 20. As a party that asserts that it is an online service provider who hosts content for
 20 third parties, Amazon regularly claims protection under the safe harbor provisions of the Digital
 21 Millennium Copyright Act, 17 U.S.C. § 512.
 22

23 21. Upon information and belief, Amazon can remove each link for infringing product
 24 that is hosted on the Amazon Website.
 25
 26
 27

COMPLAINT

Case No. 20-1765

1 22. Amazon has registered an agent with the United States Copyright Office for receipt
2 of DMCA notices.

3 23. Plaintiff submitted a DMCA-compliant notice to Amazon requesting removal of
4 links to infringing products and received the following automated response shortly after submitting
5 his DMCA-compliant notice: “We received your email. Amazon respects the intellectual property
6 rights of others. After we process your notice, we will notify you by email. This usually takes 1 to
7 2 days.”
8

9 24. Plaintiff never authorized the infringing uses of the Subject Work, as set forth
10 above.
11

12 25. Plaintiff’s DMCA notice to Amazon contained a total of 51 links to infringing
13 products being sold. Over one month later, 24 listings remain active.
14

15 26. Annexed hereto as **EXHIBIT D** is the October 14, 2020 DMCA notice, with the
16 currently active listings highlighted. The fact that some listings were removed, but not others,
17 demonstrates that Amazon reviewed the DMCA notice and then cherry-picked which listings it
18 would remove.

19 27. Aside from Amazon’s automated response email, Amazon has not contacted
20 Plaintiff regarding his DMCA notice.
21

22 28. Because Amazon has failed to respond to Plaintiff’s DMCA notice expeditiously,
23 it cannot claim protection under the DMCA’s Safe Harbor as contemplated by 17 U.S.C. § 512.
24

25 **FIRST CLAIM FOR RELIEF**

26 (For Copyright Infringement – Against All Defendants, and Each)

27 29. Plaintiff repeats, realleges, and incorporates the allegations contained in the
preceding paragraphs of this Complaint as if fully set forth herein.

COMPLAINT

Case No. 20-1765

1 30. Plaintiff is, and at all relevant times has been, the owner of the Subject Work.

2 31. The Subject Work is copyrightable subject matter under 17 U.S.C. § 102(a)(5).

3 32. Plaintiff has complied in all respects with the provisions and requirements of the
4 Copyright Act.

5 33. Plaintiff duly registered the copyright to the Subject Work with the United States
6 Copyright Office prior to the acts complained of herein.

7 34. Plaintiff has exclusive rights under 17 U.S.C. § 106 to reproduce, prepare derivative
8 works of, distribute copies of, and publicly display the Subject Work.

9 35. Without Plaintiff's authorization, the Subject Work was reproduced on products
10 and were publicly displayed on, and distributed via, the Amazon Website.

11 36. Defendants, and each of them, had actual knowledge of the infringement of
12 Plaintiff's copyrights.

13 37. Plaintiff provided notice to Amazon in compliance with the DMCA and Amazon
14 failed to expeditiously disable access to or remove at least 24 infringing links on the Amazon
15 Website.

16 38. Amazon had actual knowledge of the infringing listings on the Amazon Website.

17 39. In failing to disable and/or remove the infringing links from the Amazon Website
18 after receipt of Plaintiff's DMCA notice, Amazon acted willfully as contemplated by 17 U.S.C.
19 § 504(c)(2).

20 40. Amazon directly infringed Plaintiff's copyrights by continuing to allow public
21 access to the infringing links on the Amazon Website and/or Amazon's server or on servers
22
23
24
25
26
27

COMPLAINT

Case No. 20-1765

1 controlled by Amazon or through access controlled by Amazon to third-party servers, and by
2 continuing to allow sales of a vast array of infringing products.

3 41. Upon information and belief, Defendants, and each of them, had access to the
4 Subject Work through, without limitation, accessing the Subject Work (a) on Plaintiff's website;
5 (b) on various websites authorized to sell products bearing the design, including without limitation
6 RedBubble.com and TeePublic.com; and (c) through third-party manufacturers and/or vendors of
7 authorized product. Access is also established by the striking similarity between the Subject Work
8 and the corresponding artwork on Defendants', and each of their, infringing products.
9
10

11 42. Upon information and belief, one or more of the DOE Defendant
12 manufacturers/distributors has an ongoing business relationship with DOE Defendant retailers,
13 and each of them, and supplied products to said retailers, which products infringed the Subject
14 Work in that said products featured unauthorized print design(s) that were identical or substantially
15 similar to the Subject Work, or were an illegal derivation or modification thereof.
16

17 43. Upon information and belief, Defendants, and each of them, infringed Plaintiff's
18 copyrights by creating, making, and/or developing directly infringing and/or derivative works from
19 the Subject Work and by producing, distributing and/or selling apparel and/or other products which
20 infringe the Subject Work through Amazon's nationwide network.
21

22 44. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages
23 to his business, including without limitation, lost profits and lost licensing revenue, in an amount
24 to be established at trial.
25

25 45. Due to Defendants' acts of infringement, Plaintiff has suffered general and special
26 damages in an amount to be established at trial.
27

COMPLAINT

Case No. 20-1765

46. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Work. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of Plaintiff's rights in the Subject Work in an amount to be established at trial.

47. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00) per infringement. Within the time permitted by law, Plaintiff will make his election between actual damages and statutory damages.

SECOND CLAIM FOR RELIEF

(For Vicarious and/or Contributory Copyright Infringement – Against All Defendants, and Each)

48. Plaintiff repeats, realleges, and incorporates the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

49. Upon information and belief, Defendants, and each of them, knowingly induced, participated in, aided and abetted in and profited from the illegal reproduction and/or subsequent sales of apparel and other products featuring the Subject Work, as alleged herein.

50. Upon information and belief, Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

51. By reason of the Defendants' acts of contributory and vicarious infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to his business

COMPLAINT

Case No. 20-1765

1 in an amount to be established at trial, as well as additional general and special damages in an
 2 amount to be established at trial.

3 52. Due to Defendants' acts of copyright infringement as alleged herein, Defendants
 4 have obtained direct and indirect profits they would not otherwise have realized but for their
 5 infringement of the Subject Work. As such, Plaintiff is entitled to disgorgement of Defendants'
 6 profits directly and indirectly attributable to Defendants' infringement of Plaintiff's rights in the
 7 Subject Work, in an amount to be established at trial.
 8

9 53. Upon information and belief, Defendants, and each of them, have committed acts
 10 of copyright infringement, as alleged above, which were willful, intentional and malicious, which
 11 further subjects Defendants to liability for statutory damages under Section 504(c)(2) of the
 12 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00) per
 13 infringement. Within the time permitted by law, Plaintiff will make his election between actual
 14 damages and statutory damages.
 15
 16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff requests judgment against each Defendant as follows:

- 19 A. that the Court enter judgment against Defendant setting forth that Defendant has infringed
 20 Plaintiff's federally registered copyright to the Subject Work, as contemplated by 17
 21 U.S.C. §501;
 22
 23 B. that each Defendant and its respective agents, officers and servants be enjoined from
 24 importing, manufacturing, creating derivative works, publishing, displaying, distributing,
 25 offering for sale, selling or otherwise trafficking in any materials that infringe Plaintiff's
 26 copyrights in and to the Subject Work;
 27

COMPLAINT

Case No. 20-1765

- 1 C. impounding all unauthorized material that bears infringing copies of the Subject Work in
2 the possession or control of Defendants pursuant to 17 U.S.C. §503(a)(1)(A), and ordering
3 destruction of all unauthorized material bearing the Works, pursuant to 17 U.S.C. §503(b);
4
5 D. that Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, the exact sum
6 to be proven at the time of trial, or, if elected before final judgment, statutory damages as
7 available under 17 U.S.C. § 504(c);
8
9 E. that Plaintiff be awarded his attorneys' fees as available under 17 U.S.C. § 505;
10
11 F. that Plaintiff be awarded pre-judgment interest as allowed by law;
12
13 G. that Plaintiff be awarded the costs of this action; and
14
15 H. that Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

16 PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE PURSUANT
17 TO FED. R. CIV. P. 38 AND THE 7TH AMENDMENT TO THE UNITED STATES
18 CONSTITUTION.

19 DATED: November 30, 2020

Respectfully submitted,

THE JACOB FREEMAN LAW FIRM, PLLC

By: 

Jacob P. Freeman, WSBA #54123
415 1st Avenue N No. 9466
Seattle, Washington 98109
Tel.: (206) 350-1066
Fax: (206) 350-1120
Email: jfreeman@jflpllc.com

COMPLAINT

Case No. 20-1765

The Jacob Freeman Law Firm, PLLC

415 1st Avenue N | No. 9466
Seattle, Washington | 98109
tel: 206-350-1066 | fax: 206-350-1120

DANCHUK LAW, LLC

By: /s/ Dmitry Lapin
Dmitry Lapin, Esq.
(*Pro hac vice application forthcoming*)
2 Victoria Lane
Falmouth, Maine 04105
Tel.: (207) 464-0099
Email: dmitry@emilyesquire.com

Attorneys for Plaintiff Douglas Cavanaugh

COMPLAINT

Case No. 20-1765